

Loudoun County, Virginia

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County Administration

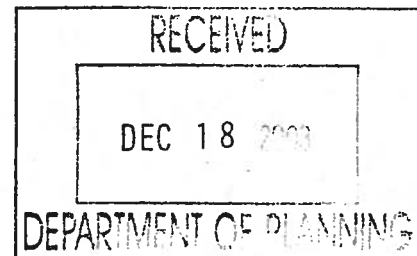
1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000

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*Van Armstrong
Planning*

At a meeting of the Board of Supervisors of Loudoun County, Virginia, held in the County Government Center, Board of Supervisors' Meeting Room, 1 Harrison St., S.E., Leesburg, Virginia, on Monday, December 15, 2003 at 9:00 a.m.

PRESENT: Scott K. York, Chairman
Eleanore C. Towe, Vice Chairman
William Bogard
James G. Burton
Eugene A. Delgaudio
Chuck Harris
Mark Herring
J. Drew Hiatt
Sally Kurtz



IN RE: LAND USE COMMITTEE REPORT/ZMAP 2002-0005 / LOUDOUN STATION

Mr. Herring moved that the Board of Supervisors approve the recommendation of the Land Use Committee to approve ZMAP 2002-0005, Loudoun Station, subject to the Proffer Statement dated November 3, 2003 inclusive of the zoning ordinance modifications requested by the applicant, the Letter of Clarification dated December 9, 2003, and based upon the attached findings.

Seconded by Mr. Harris.

Voting on the Motion: Supervisors Bogard, Burton, Harris, Herring, Hiatt, Kurtz, Towe, York - Yes; Supervisor Delgaudio - No.

COPY TESTE:

Denise Ryzs

DEPUTY CLERK FOR THE LOUDOUN
COUNTY BOARD OF SUPERVISORS

Comstock Loudoun Station, L.C.
Kin-Sing and Florence H. Au
c/o The Comstock Companies
11465 Sunset Hills Road, Suite 510
Reston, VA 20190
(703) 883-1700

December 9, 2003

Via Hand Delivery

The Honorable Scott K. York, Chairman
Loudoun County Board of Supervisors
1 Harrison Street, SE, 5th Floor
Leesburg, Virginia 20175

Re: ZMAP 2002-0005, Loudoun Station
Letter of Clarification To Proffer Statement dated November 3, 2003

Dear Chairman York:

The undersigned applicant and record owners of the property involved in ZMAP 2002-0005 (jointly, "Applicant") hereby provide this letter, which will serve to clarify the Proffer Statement for ZMAP 2002-0005, Loudoun Station, dated November 3, 2003 (the "Proffers") in accordance with discussions held with the Board of Supervisors Land Use Committee. Only the specifically referenced proffers below are being revised and all of the other proffers contained in the November 3, 2003 version of the proffers remain valid. To assist in the review of this Letter of Clarification, text changes from the November 3, 2003 proffers are shown in a **bold** (new text) and ~~strike-out~~ (deleted text) formats. The Applicant hereby makes the following clarifications to the Proffers, which are revised to read as follows:

II. TRANSPORTATION PROFFERS

M. Transit Oriented Development Oversight Committee

With the understanding that one of the goals of the Revised General Plan ("RGP") is to achieve a cohesive, comprehensive organization of developments, transportation improvements, and other activities at the Route 772 Transit Node, the Applicant shall work with civic and community groups, regulatory agencies, and other groups having interests in and around the Route 772 Transit Node, including, but not limited to, the County, the developers or developers of Moorefield Station, the Regency Homeowners Association, Washington Metropolitan Area Transit Authority ("WMATA"), and the Metropolitan Washington Airports Authority ("MWAA"), in order to achieve

this goal. It is understood that cooperation and coordination between these referenced entities is essential for the successful implementation of the RGP's Transit Oriented Development ("TOD") policies for Route 772 Transit Node. To this end, the Applicant agrees to take a leadership position during its first phase of development to assist in the formation of a Transit Oriented Development Oversight Committee ("TODOC") in order to encourage fulfillment of this goal. It is the stated intent and desire of the Applicant to establish this TODOC in order to help support and resolve TOD-related development issues, to ensure that development of a Route 772 Transit Node occurs in substantial conformance with the RGP's TOD policies, and to establish a convenient and highly functional transit system utilizing bus and rail service and to help provide user-friendly pedestrian access throughout the TOD.

VI. OPEN SPACE, CAPITAL FACILITIES, AND MISCELLANEOUS

B. OFF-SITE REGENCY PEDESTRIAN/ BIKE TRAIL

~~Prior to the filing of the first FDP for Phase 2 development, the Applicant shall seek approval by the adjacent Regency HOA to construct an eight foot wide bicycle trail within the permanent open space of the adjacent Regency subdivision. If such approval is granted, this trail shall be located within a public access easement dedicated to the County by the Regency HOA. The Regency HOA will be given 60-day notice prior to the submission of this first FDP for Phase 2 development in which to respond. The County will be provided a copy of all correspondence related to this issue. The precise location of the eight foot wide bicycle trail will be determined at time of approval of the first FDP for Phase 2 development and will generally run from the Shellhorn Road vicinity in a northerly direction towards Ryan or Waxpool Roads. If this trail is constructed, the LSOA shall maintain the trail. Such trail will be constructed if and only if approved in writing by the Regency HOA to the County, and any required work permission letters are provided to the Applicant by the Regency HOA. If the foregoing conditions are not agreed to prior to the submission of the first FDP for Phase 2 development, the Applicant shall provide a \$150,000.00 contribution to the County Trails Program, in lieu of construction, which shall be due and payable prior to the issuance of the first Zoning Permit for any building in Phase 2. The Regency HOA will be properly notified in advance of this payment in lieu of construction to the County. Such contribution shall be escalated in accord with changes to the Consumer Price Index.~~

D. SCHOOL CAPITAL IMPROVEMENT PROGRAM

~~At the time of issuance of each residential Zoning Permit, the~~ The Applicant will contribute to the County or its designee the amount of ~~\$100.00~~ **\$200.00** per dwelling unit **and \$0.10 per gross square foot of non-residential space, at the time of issuance of each Zoning Permit** toward a capital facility improvement fund for the Loudoun County School District capital improvement expenditures or other appropriate agency, ~~payable at the time of issuance of each residential Zoning Permit.~~ **Under no circumstances shall this aggregate contribution equal less than \$412,800.00. In the event that the actual mix of residential and non-residential uses, as determined through zoning permit issuances, yields a contribution of less than \$412,800.00, the difference shall be paid to the County prior to zoning permit issuance for the 1500th residential dwelling unit or the 1,100,000th square foot of non-residential development, whichever occurs first in time. All Such contributions shall be escalated in accord with changes to the CPI.**

VI. OPEN SPACE, CAPITAL FACILITIES, AND MISCELLANEOUS

G. Pedestrian Linkage to the Moorefield Station Transit-oriented Development on the South Side of the Dulles Greenway

With the understanding that pedestrian linkages are fundamental to the proper development and function of the Route 772 Transit Node, the Applicant shall work with other landowners in the vicinity of the Subject Property, private transit-supportive groups, and governmental agencies, including, but not limited to, the County, the developers or developers of Moorefield Station, WMATA, and the MWAA, in order to establish convenient and functional pedestrian linkages across the Dulles Greenway between the inner core developments on both sides of the Dulles Greenway at the Route 772 Transit Node.

The undersigned hereby warrants that all owners with a legal interest in the Subject Property have signed this Letter of Clarification, that all signatories have full authority to bind the Subject Property to these conditions, and that this Letter of Clarification is entered into voluntarily.

COMSTOCK LOUDOUN STATION, L.C.

By: ~~Comstock Partners, L.C.~~, Manager

By: 

Christopher D. Clemente, Managing Member

COMMONWEALTH OF VIRGINIA

COUNTY OF Fairfax, to-wit:

Subscribed and sworn to before me this 10th day of December, 2003,
by Christopher D. Clemente, as Managing Member of Comstock Partners, L.C., being the
Manager of Comstock Loudoun Station, L.C.

Sarah A Schan

Notary Public

My Commission Expires:

10.31.05



Kin-Sing Au
Kin-Sing Au

Florence H. Au
Florence H. Au

COMMONWEALTH OF VIRGINIA
COUNTY OF Fairfax, to-wit:

Subscribed and sworn to before me this 11th day of December, 2003,
by Kin-Sing Au.

Sarah A. Schar
Notary Public

My Commission Expires: 10.31.05

COMMONWEALTH OF VIRGINIA
COUNTY OF Fairfax, to-wit:

Subscribed and sworn to before me this 10th day of December, 2003,
by Florence H. Au.

Sarah A. Schar
Notary Public

My Commission Expires: 10.31.05

PROFFER STATEMENT

FOR

LOUDOUN STATION

A

TRANSIT ORIENTED DEVELOPMENT

REZONING APPLICATION: ZMAP 2002-0005

Submitted By:

Comstock Loudoun Station, L.C.

Loudoun Station

PROFFER STATEMENT

ZMAP 2002-0005

December 23, 2002
Revised February 21, 2003
Revised April 15, 2003
Revised June 6, 2003
Revised July 18, 2003
Revised August 19, 2003
Revised September 5, 2003
Revised September 25, 2003
Revised October 10, 2003
Revised October 17, 2003
Revised October 24, 2003
Revised November 3, 2003

Comstock Loudoun Station, L.C., a Virginia limited liability company, as the record owner of LCTM 79-26 (MCPI # 089-46-6945) and LCTM 79-26A (MCPI#089-46-8978), and Kin-Sing and Florence H. Au, the record owners of LCTM 79-((2))-1 and 79-((2))-2, (MCPI #089-36-2659 and #089-45-8208), (hereinafter referred to collectively as the "Applicant") hereby voluntarily proffer, pursuant to Section 15.2-2303 of the Code of Virginia (1950), as amended, and Section 6-1209 of the Revised 1993 Zoning Ordinance of Loudoun County, Virginia, as amended, that in the event: (1) the above-referenced parcels (hereinafter referred to as the "Subject Property") are rezoned to the PD-TRC (Planned Development - Transit Related Center) Zoning District, as proposed in ZMAP 2002-0005 and as shown on the ZMAP Concept Development Plan, (hereinafter referred to as the "CDP"), described in proffer I (A), below, and (2) Certain zoning modifications proposed in conjunction with ZMAP 2002-0005 and attached hereto as Exhibit A, are approved, the development of the Subject Property will be in substantial conformity with the following terms and conditions. These proffers supersede and replace any and all existing proffers that pertain to the Subject Property.

The Subject Property is adjacent to the Route 772 Transit Station Area ("TSA"), and will be developed as a vertically mixed, Transit Oriented Development ("TOD") as defined by the Revised General Plan and as embodied in the PD-TRC Zoning District, and subject to the attached CDP as prepared by Urban Engineering & Assoc., Inc.

I. CONCEPT DEVELOPMENT PLAN (CDP)

A. CONFORMITY WITH CONCEPT DEVELOPMENT PLAN

Development of the Subject Property shall be in substantial conformity with the CDP prepared by Urban Engineering & Assoc., Inc. entitled "Rezoning for Loudoun Station A Transit Oriented Development, Loudoun County, Virginia Concept Development Plan for ZMAP #2002-0005" dated March 2002, with revisions through October 24, 2003. Sheets 1 through 5, and 12 are proffered sheets. The other sheets are for illustrative purposes only but are descriptive of the project design program for Loudoun Station. The CDP has been developed in accordance with the Revised 1993 Zoning Ordinance (the "Zoning Ordinance"). One or more Final Development Plan(s) ("FDP") will be provided for review and approval by the Planning Commission prior to the submission of a site plan application for any part or any phase of the Subject Property in accordance with Section 4-1103 of the Zoning Ordinance. The CDP specifies that the Subject Property shall not exceed 1,884,379 net square feet of non-residential floor area nor 1,514 residential dwelling units and will not exceed the limits of the Zoning Ordinance. Development will not exceed the densities portrayed in the Phasing Table as defined in Section I.E. of these proffers.

The Subject Property contains portions of two of the three subareas allowed within the PD-TRC district, namely, Inner Core and Outer Core, as shown on the CDP, and shall not extend further north than Shellhorn Road, which is the northern limit of this application. The limits of the Transit Supportive Area (one mile from the outer edge) are beyond the Shellhorn Road northern limit. Thus, a request to modify the requirement that a designated Transit Supportive Area exist within the Loudoun Station PD-TRC has been submitted for review simultaneously with this application.

B. LAND USES FOR CONCEPT DEVELOPMENT PLAN

The Subject Property will be developed with permitted PD-TRC Zoning District land uses. The CDP depicts the land use mix of office, hotel, theatre, retail, focal points, parks, civic, and open space, and residential uses. Theatre square footage shall be deemed retail use square footage in the determination of use densities pursuant to the Zoning Ordinance. In meeting the mixed use requirements of Section 4-1109 (A) and (C) of the Zoning Ordinance, hotel square footage will be counted as office use.

Loudoun Station will have three phases of development as defined by the Revised General Plan and Section 4-1107 of the Zoning Ordinance, on the Subject Property:

Phase 1 - prior to bus services, as defined by the Zoning Ordinance;

Phase 2 - when bus services and facilities are planned, scheduled, designed and fully funded as defined by the Zoning Ordinance; and

Phase 3 - when rail services and facilities are planned, scheduled, designed and fully funded as defined by the Zoning Ordinance.

Phase 2 and Phase 3 of the development shall be based on availability of certain transit services to the Subject Property in accordance with Section 4-1107 of the Zoning Ordinance. As required by Section 4-1109 (A) of the Zoning Ordinance, the Loudoun Station PD-TRC will provide "Parks,

Civic, and Open Space” areas in accordance with Sheet 3 of the CDP. Two focal points are shown on Sheet 2 of the CDP and the Applicant shall provide these focal points as stated elsewhere in these proffers. The general vicinity of a plaza accessible to the public is also shown on Sheet 2 of the CDP. The three phases of development are not based on sections of land area within the Subject Property but rather, shall refer to the amount of development permitted on the entire Subject Property at various times as described in the Proposed Loudoun Station Phasing Table shown on Sheet 3 of the CDP and based on the status of various transportation improvements, as required by the Zoning Ordinance and these proffers.

Phase 1 shall mean the Subject Property may be developed with a non-residential FAR of 0.6 (applied to the portion of land area of the Subject Property designated for non-residential use) and up to 16 dwelling units per acre (applied to the portion of land area of the Subject Property designated for residential use).

Phase 2 shall mean the Subject Property may be developed with a non-residential FAR of 1.0 (applied to the portion of land area of the Subject Property designated for non-residential use) and up to 32 dwelling units per acre (applied to the portion of land area of the Subject Property designated for residential use).

Phase 3 shall mean the Subject Property may be developed with a non-residential FAR of 2.0 (applied to the portion of land area of the Subject Property designated for non-residential use) and up to 50 dwelling units per acre (applied to the portion of land area of the Subject Property designated for residential use).

Except as established by the Loudoun Station Phasing Table shown on Sheet 3 of the CDP, there shall be no additional restrictions on the amount of overall development on the Subject Property within each Phase, provided the mix of uses and densities set forth in the Proposed Loudoun Station Phasing Table shown on Sheet 3 of the CDP and as required by the Zoning Ordinance is met prior to the first FDP being approved by the County for any additional development attributable to the next Phase.

The Applicant shall not be required to fulfill proffers associated with any phase of development of the Subject Property unless the Applicant wishes to obtain zoning permits for densities associated with those phases of development. Although bus and/or rail services may be planned, scheduled, designed, and fully funded, as defined in the Zoning Ordinance prior to the Applicant’s request for zoning permits for Phase 2 (bus) and/or Phase 3 (rail) development, the Applicant shall not be required to fulfill proffers associated with these phases unless the Applicant requests issuance of zoning permits associated with these phases.

C. STRUCTURED PARKING

The Applicant may initially develop the Subject Property with only grade-level (surface) parking in Phases 1 and 2, but will construct structured parking lots generally as shown on the CDP when needed to comply with applicable parking requirements. Structured parking shall be provided with Phase 3 development if not provided in earlier phases. The Applicant, at its own discretion, may build structured parking during any phase of the development, or as an extension to (attached and integrated into) a multi-story building and may construct the structured parking garages in sections. The Applicant may, at the time of FDP review and approval, request that the County credit on-street parking provided along Market Street and Center Street and along private roads and alleys

toward the overall parking requirement of the entire project. All required parking shall be provided on the Subject Property.

D. RETAIL DEVELOPMENT

No single-story freestanding retail building will be permitted on the Subject Property. However, when a multi-story building is planned to have different uses on different floors, the initial first floor, or the initial first and second floor, of such building may be constructed as free standing retail if the building is designed to accommodate the ultimate design of multiple floors. Each such building will have office or residential uses vertically integrated prior to the issuance of the first Zoning Permit in Phase 3. Prior to the issuance of the first Zoning Permit for each such freestanding retail building proposed for first floor, or first and second floor, retail uses, the County will review the initial freestanding building design and determine whether or not this design possesses the structured load-bearing capacity to accommodate additional floors. The minimum building height requirement of Section 4-1107 (B)(2) will be met for all phases of the development, unless modified at time of FDP review and approval. Issuance of the requested Zoning Permit for the freestanding retail building shall be dependent upon a favorable determination that the building design indeed possesses the structural load-bearing capacity to accommodate additional floors in conformance with this proffer.

E. DEVELOPMENT PHASING/TRANSIT AVAILABILITY

The Subject Property shall be developed in three phases as regulated by the "Proposed Loudoun Station Phasing Table" proffered as an element of the CDP, which states that the last two phases of the development are dependent upon the availability of an external bus (Phase 2) and rail transit (Phase 3) to the site according to the following transit-related conditions:

1. **Phase 1:** Phase 1 shall be that level of development, commencing with approval of this rezoning application, which may be constructed prior to availability of bus service to the Subject Property, and shall not be dependent upon bus or rail transit availability. Roadways only will serve the Subject Property as approved, based on these proffers.
2. **Phase 2:** Phase 2 shall be that level of development, inclusive of Phase 1 development, that shall not commence until the bus services and facilities are planned, scheduled, designed and fully-funded as defined by the Zoning Ordinance for a publicly supported or operated bus service to the Subject Property.
3. **Phase 3:** Phase 3 shall be that level of development, inclusive of Phase 1 and Phase 2 development, that shall not commence until transit rail services and facilities are planned, scheduled, designed, and fully funded, as defined in the Zoning Ordinance, to provide rail service to the Route 772 Station area in the vicinity of the Subject Property. In Phase 3, full build-out of the Subject Property can be completed with a maximum non-residential FAR limit of 2.0 (a maximum of 1,884,379 square feet) and a maximum residential density of 50 units per acre (a maximum of 1,519 residential units).

The phasing of the Subject Property will be developed based on the provisions of FDP(s) and shall conform to the revised Zoning Ordinance and the "Proposed Loudoun Station Phasing Table" contained on Sheet 3 of the CDP.

F. PHASING OF ROAD IMPROVEMENTS

Based upon the three phases of development, the Applicant will provide the following road improvements to service the Subject Property and provide for the dedication of any necessary on-site right-of-way, and all related easements outside of the right-of-way, such as slope, maintenance, storm drainage and utility relocation easements, required for these phased road improvements:

1. **Phase 1:** Phase 1 of Loudoun Station shall permit development of non-residential uses and residential dwelling units based upon the Proposed Loudoun Station Phasing Plan on Sheet 3 of the CDP. Prior to the approval of the first record subdivision or site plan, whichever is first in time, (unless otherwise noted) for development of any Phase 1 uses on the Subject Property, the following Phase 1 road improvements shall either be constructed or bonded for construction. In the event such improvements have already been constructed by the County or others, a cash equivalent contribution in-lieu of construction will be made to the County at that time, unless otherwise noted herein:

a. Shellhorn Road (Route 643) – Subject Property Frontage and west to Ryan Road:

Shellhorn Road shall be bonded or constructed to the ultimate divided four-lane section by the Applicant from the eastern edge of the Subject Property, west to Ryan Road (Route 772), portions of which have already been constructed. The on-site right-of-way required for this Shellhorn Road improvement shall be dedicated upon request of the County if needed prior to construction of Shellhorn Road improvements by the Applicant. In the event this ultimate divided four lane section of Shellhorn Road or portions thereof have already been constructed by others prior to issuance of the first zoning permit for the Subject Property, then the obligation set forth in this sub-paragraph to construct those already constructed portions of this section of Shellhorn Road shall be deemed to be fulfilled and the Applicant shall not be required to make a cash-in-lieu contribution for the already constructed portions of this section of Shellhorn road;

- b. Shellhorn Road (Route 643) – Right Turn Lane at Ryan Road:** An exclusive southbound right turn lane on Shellhorn Road at Ryan Road shall be bonded or constructed prior to the issuance of the zoning permit for the 400th residential dwelling unit or the 250,000th square foot of non-residential floor area, whichever event occurs first, for the Subject Property;

- c. Shellhorn Road (Route 643) – Off-site east to Loudoun County Parkway:** If the ultimate divided four lane section of Shellhorn Road between eastern edge of the Subject Property east to Loudoun County Parkway (Route 607) has not been bonded or constructed by others prior to zoning permit issuance for the 100th residential dwelling unit or the 75,000th square foot of non-residential floor area, whichever occurs first, then the Applicant, at that time, shall bond or construct any portions of this ultimate section of Shellhorn Road subject to the development agreement described herein below. Portions of these improvements are current proffer obligations of other Shellhorn Road landowners and such proffer obligations contain cash-in-lieu payment provisions in the event those proffer obligations are fulfilled by others. In the event this ultimate divided four lane section of Shellhorn Road has been bonded or constructed by others prior to zoning permit issuance for the 100th residential dwelling unit or the 75,000th square foot of non-residential floor area, whichever occurs first, then the obligation set forth in this sub-paragraph shall be deemed to be fulfilled and the Applicant shall not be required to make a cash-in-lieu contribution for this improvement. If this ultimate divided four-lane section of Shellhorn

Road has not been constructed or bonded for construction by others prior to the submission of the first FDP for the Subject Property, then at the time of submission of the first FDP, the Applicant shall submit a development agreement to the County for review and approval whereby the Applicant agrees to construct this ultimate divided four lane section of Shellhorn Road and the County agrees to reimburse the Applicant if and when such cash-in-lieu payments are actually received by the County.

- d. **Loudoun Station Boulevard:** Proposed Loudoun Station Boulevard will be bonded or constructed along the western boundary of the Subject Property as a four-lane undivided public roadway from its intersection with Shellhorn Road to its intersection with Center Street, in substantial conformance with Sheets 4 and 5 of the CDP prior to the issuance of the zoning permit for the 400th residential dwelling unit or the 250,000th square foot of non-residential development, whichever event occurs sooner, for the Subject Property. The on-site right-of-way required for this Loudoun Station Boulevard improvement shall be dedicated upon request of the County if needed prior to construction of Loudoun Station Boulevard improvements by the Applicant;
 - e. **Loudoun Station Boulevard:** Proposed Loudoun Station Boulevard will be constructed along the eastern boundary of the Subject Property as a two-lane undivided public roadway from its intersection with Shellhorn Road to its intersection with Center Street, in substantial conformance with Sheets 4 and 5 of the CDP prior to the issuance of the zoning permit for the 400th residential dwelling unit or the 250,000th square foot of non-residential development, whichever event occurs sooner, for the Subject Property. The on-site right-of-way required for this Loudoun Station Boulevard improvement shall be dedicated upon request of the County if needed prior to construction of Loudoun Station Boulevard improvements by the Applicant.
2. **Phase 2:** Phase 2 of Loudoun Station shall allow for development of nonresidential uses and residential dwelling units based on the Proposed Loudoun Station Phasing Table included on Sheet 3 of the CDP. Prior to the approval of the first record subdivision or site plan, whichever is first in time (unless otherwise noted), for development of any Phase 2 uses, the following Phase 2 improvements (in addition to all Phase 1 improvements) shall either be constructed or bonded for construction. In the event such improvements have already been constructed by the County or others, a cash equivalent contribution in-lieu of construction will be made to the County at that time, unless otherwise noted herein:
- a. **Construction of Bus Facilities:** Prior to the issuance of the first zoning permit for Phase 2, the Applicant shall construct or fund a permanent bus station on-site (generally in the area shown as "Approximate Area of Dedication for Transit Purposes, Bus Station, and Kiss and Ride" on the CDP), in a location to be determined in consultation with the Washington Metropolitan Area Transit Authority (WMATA), the County, and other appropriate entities as identified by the County. The Applicant shall construct the permanent bus station based on designs approved by the County, WMATA, or other appropriate entities as identified by the County if the cost is projected to be \$648,000.00 or less, and provide a cash contribution for the difference between the actual cost of construction and \$648,000.00. In the event the above-referenced permanent bus station is projected to cost more than \$648,000.00, the Applicant shall provide, a cash contribution to the County for the construction of the bus station and related facilities in the amount of \$648,000 as escalated in accord with changes to the Consumer Price Index. The projected

cost of the permanent bus station shall be determined by use of the published WMATA capital cost estimate for comparable facilities as may be amended by the County in its discretion. Additionally, the Applicant shall seek permission from the Dulles Greenway to create direct bus slip ramps from the Dulles Greenway into and out of the Subject Property and, if granted, shall work with the Dulles Greenway, the County, the Commonwealth of Virginia, and/or WMATA toward the design and construction of these direct bus slip ramps. The Applicant may also, at its option and with the concurrence of the County, construct an interim temporary bus station facility on the Subject Property in order to facilitate bus service prior to the completion of the permanent bus station.

- b. Dedication of the “Approximate Area of Dedication for Transit Purposes, Bus Station, and Kiss & Ride”:** Approximately 2.5± acres will be dedicated for transit purposes, bus station, and Kiss & Ride as identified on and in substantial conformance to Sheet 4 of the CDP. The Kiss & Ride facility will be constructed by the Applicant based on designs approved by the County, WMATA or other appropriate entity as directed by the County, if requested by the County and if not previously constructed by others, and will be dedicated to either the County or WMATA, or other such entity, as directed by the County, at the location shown on Sheet 4 of the CDP. Such Kiss and Ride shall be for the use by WMATA or other such entity, for bus and rail pick up and drop off to the rail station platform and bus station. It is understood that the Phase 3 rail station and platform improvements (station, pedestrian bridge, access facility, and related infrastructure) will be built by WMATA, or other entity. This 2.5 acre area shall be used for passenger bus station and rail station-related uses only, providing public access to and from the transit improvements, and shall not be used as maintenance and/or repair facilities, storage, or other non-public access purposes. The deed of dedication from the Applicant may reserve certain “air rights”, as determined by the County, above the 2.5± acre dedication site thereby allowing for the Applicant to file and process a Zoning Concept Plan Amendment (ZCPA) so as to incorporate these “air rights” into the Loudoun Station PD-TRC;
- c. Private Roadways:** Any private roadways, shown on the CDP or specifically proffered by the Applicant, that are required to support Phase 2 development, will be bonded or constructed prior to the issuance of a zoning permit for the 750th residential dwelling unit or the 650,000th square foot of non-residential development, whichever event occurs sooner, for the Subject Property. Private roadways will have public access easements over such private roadways prior to approval of any record plat or site plan, containing such private roads;
- d. Ryan Road (Route 772):** Ryan Road will be widened to six lanes, portions of which are already in place, under design by others, or under construction, from the intersection of Shellhorn Road (Route 643) to the beginning of the bridge over the Dulles Greenway (Route 267). The Applicant will only be required to complete the balance of improvements necessary to provide a six-lane configuration prior to the issuance of the zoning permit for the 750th residential dwelling unit or the 650,000th square foot of non-residential development, whichever event occurs sooner, for the Subject Property. This improvement shall not include work on the bridge itself;
- e. Loudoun Station Boulevard (west side):** Proposed Loudoun Station Boulevard will be constructed, along the western boundary of the Subject Property, from its intersection with Center Street as a four-lane undivided public roadway to the intersection of Meadowgate Drive, in substantial conformance with Sheets 4 and 5 of the CDP prior to the issuance of

the 750th residential dwelling unit or the 650,000th square foot of non-residential development, whichever event occurs sooner, for the Subject Property.;

- f. Loudoun Station Boulevard (east side):** Proposed Loudoun Station Boulevard will be constructed, along the eastern boundary of the Subject Property, from its intersection with Center Street as a two-lane undivided public roadway to the intersection with Devin Shafron Drive, in substantial conformance with Sheets 4 and 5 of the CDP prior to the issuance of the 750th residential dwelling unit or the 650,000th square foot of non-residential development, whichever event occurs sooner, for the Subject Property. Concurrent with the construction of this improvement, the Applicant shall extend Devin Shafron Drive, as a two-lane, undivided road section, from its current terminus to Loudoun Station Boulevard.
- 3. Phase 3:** Phase 3 shall allow for the development of non-residential uses and residential dwelling units on the Subject Property based on the "Proposed Loudoun Station Phasing Table" shown on Sheet 3 of the CDP. Prior to approval of the first record subdivision or site plan, whichever is first in time (unless otherwise noted), for development of any Phase 3 uses, the following Phase 3 improvements (in addition to all Phase 1 and 2 improvements) shall be constructed or bonded for construction. In the event such improvements have already been constructed by the County or others, a cash equivalent reimbursement in-lieu of construction will be made to the County at that time, unless otherwise noted herein:

 - a. Loudoun Station Boulevard (balance):** Proposed Loudoun Station Boulevard will be bonded or constructed, from Meadowgate Drive to Devin Shafron Drive, in substantial conformance with Sheets 4 and 5 of the CDP. The on-site right-of-way required for this Loudoun Station Boulevard improvement shall be dedicated upon the request of the County if needed prior to construction of this portion of Loudoun Station Boulevard by the Applicant.
 - b. Shellhorn Road (Route 643):** A second left turn lane on eastbound Shellhorn Road at Loudoun County Parkway prior to the issuance of the first Zoning Permit for development in Phase 3;
 - c. Shellhorn Road (Route 643):** A free flow right turn lane on eastbound Shellhorn Road at Loudoun County Parkway prior to the issuance of the first Zoning Permit for development in Phase 3;
 - d. Loudoun County Parkway:** A second left turn lane on northbound Loudoun County Parkway at Shellhorn Road prior to the issuance of the first Zoning Permit for development in Phase 3;
 - f. Commuter Parking Parcel:** According to the proffers for the Ryan Park Center rezoning application (ZMAP 1995-0010, ZCPA 1995-0005), Ryan Park Center proffered a Parking Lot Reservation Area encumbering approximately three acres within Land Bay C of Ryan Park Center (hereinafter, the "Ryan Park Parking Lot Reservation Area"). Within 4 weeks of the approval of ZMAP 2002-0005, the Applicant shall submit to the owner of the Ryan Park Parking Lot Reservation Area a bona fide (cash fair market value) offer to purchase the Ryan Park Parking Lot Reservation Area, together with any necessary off-site stormwater management easements that may be required for development of parking facilities on the Ryan Park Parking Lot Reservation Area, for dedication to the County for

the construction of a parking facility by the County, WMATA, or other entity designated by the County. If the Ryan Park Parking Lot Reservation Area cannot be obtained either; i) voluntarily through donation or proffer to the County; or ii) through purchase at fair market value by the Applicant, the Applicant shall request that the County acquire the Ryan Park Parking Lot Reservation Area by appropriate eminent domain proceedings by the County, with all costs associated with the eminent domain proceedings to be borne by the Applicant, including but not limited to, land acquisition costs in accordance with procedures established by the Loudoun County Attorney's Office. The initiation of such eminent domain proceedings is solely within the discretion of the County. Should Loudoun County refuse or fail to adopt a resolution authorizing its power of eminent domain to be used, so as to allow for acquisition of the Ryan Park Parking Lot Reservation Area, within two (2) years of receipt of a written request from the Applicant to do so, the Applicant shall be relieved of its obligations to purchase the Ryan Park Parking Lot Reservation Area and its obligation to pay the costs associated with the eminent domain process. In the event the Applicant is successful in acquiring the Ryan Park Parking Lot Reservation Area, together with any necessary construction-related and/or off-site stormwater management easements that may be required for development of parking facilities on the Ryan Park Parking Lot Reservation Area, the Applicant shall thereafter dedicate the Ryan Park Parking Lot Reservation Area and the referenced off-site stormwater management easements to the County, as provided below.

Prior to dedication of the Ryan Park Parking Lot Reservation Area, the Applicant, at its option, may seek to rezone the Ryan Park Parking Lot Reservation Area to the PD-TRC Zoning District and incorporate the Ryan Park Parking Lot Reservation Area within the Loudoun Station PD-TRC. Residential and/or non-residential density credit for the newly rezoned PD-TRC Ryan Park Parking Lot Reservation Area shall be available for use within the Loudoun Station PD-TRC in the context of a Zoning Concept Plan Amendment to Loudoun Station PD-TRC rezoning, which may be concurrently processed with the rezoning of the Ryan Park Parking Lot Reservation Area. In the event the Applicant does not submit a Zoning Map Amendment application to the County in order to rezone the Ryan Park Parking Lot Reservation Area to the PD-TRC Zoning District within three (3) months after acquiring title, the Applicant shall, at that time, dedicate the Ryan Park Parking Lot Reservation Area and the referenced off-site stormwater management easements to the County. In the event the Applicant does submit a Zoning Map Amendment application to rezone the Ryan Park Parking Lot Reservation Area to the PD-TRC Zoning District within three (3) months after acquiring title, the Applicant shall immediately dedicate the Ryan Park Parking Lot Reservation Area and the referenced off-site stormwater management easements to the County within thirty (30) days following action by the Board of Supervisors on the rezoning application. If, during the pendency of the Zoning Map Amendment application, the County requests to use the Ryan Park Parking Lot Reservation Area for commuter parking purposes, the Applicant shall grant the County a license to do so until the time of dedication.

- g. Transit Commuter Bridge Contribution:** The Applicant shall pay the County \$230,000.00, in 2003 dollars, escalated in accordance with the Consumer Price Index ("CPI"). This contribution shall be used toward the construction of the planned Transit Connector Road Bridge over the Dulles Greenway. This contribution shall be paid to the County, or its designee, prior to the issuance of the first Zoning Permit for any building in Phase 3.

The Applicant will provide the County staff with written documentation for tracking of the total square footages of non-residential uses of the project and the total number of dwelling units approved on each Final Development Plan. The goal of this tracking system is to insure conformance with the proffered Phasing Table included on Sheet 3 of the CDP.

II. TRANSPORTATION PROFFERS

A. INTERNAL ROAD NETWORK

Except for Loudoun Station Boulevard, as shown on Sheets 4 and 5 of the CDP that shall be a public road, all roads and drive aisles within the Subject Property shall be private (with public access easements provided over each roadway subject to approval of the request to modify Section 4-1121(C) and (D)) and all such private roads shall not be subject to regulation or maintenance by VDOT. Center and Market Streets shall be developed in accord with Sheet 5 of the CDP.

B. PROFFERED SIGNALIZATION

The Applicant shall install intersection signalization at such time as warranted by Virginia Department of Transportation ("VDOT") criteria, i.e., the Manual on Uniform Traffic Control Devices, at the intersections of:

1. Shellhorn Road and Loudoun Station Boulevard (western intersection);
2. Shellhorn Road and Loudoun Station Boulevard (eastern intersection);
3. Shellhorn Road and Devin Shafron Drive; and
4. The three intersections between public and private streets within Loudoun Station, as shown on Sheet 4 of the CDP. These three intersections are: Center Street (east) and Loudoun Station Boulevard (east), Center Street (west) and Loudoun Station Boulevard (west), and Market Street and Shellhorn Road.

If any of those signals referenced herein, are not warranted by VDOT prior to the issuance of the first Occupancy Permit for any new buildings constructed within Phase 3, the Applicant will provide at that time, to the County, a cash equivalent contribution for any signals not yet warranted, in lieu of installation, of \$150,000.00 per signal, as escalated in accordance with the CPI from a base year of 2003.

C. INTERPARCEL ACCESS

The Applicant will provide a means for allowing for vehicular interparcel access to and through the Subject Property, in the form of a connection to Devin Shafron Drive to the east via Loudoun Station Boulevard to Center Street and Meadow Gate Drive to the west via a series of public streets and private streets with public access easements, inclusive of a roundabout (focal point), as shown on Sheet 4 of CDP. This interparcel access, inclusive of Market Street construction from Shellhorn Road to Center Street and Center Street construction from Devin Shafron Drive to Meadow Gate Drive, to and through the Subject Property shall be constructed and available to vehicular traffic

prior to zoning permit issuance for the 969th residential dwelling unit or the 942,189th square foot of non-residential development, whichever event occurs sooner.

D. ROADWAY DESIGN

All public roadways shall meet VDOT design standards for future acceptance into the VDOT system of secondary roads. Additionally, the Applicant shall design and submit for VDOT approval an intersection design at the Market Street entrance into the Subject Property across from Hartley Place and the Regency community using a "Florida T" concrete curb device to impede traffic movements exiting the Subject Property at Market Street from continuing north to Hartley Place and into the Regency Community. If approved by VDOT, the Applicant shall install this "Florida T" device and associated signalization as a bonded, Phase 1 transportation improvement. In the event the "Florida T" concrete curb device is not approved by VDOT, the Applicant shall install an equivalent device as approved by the County and VDOT.

E. LOCAL BUS SERVICE SUBSIDY

In order to facilitate publicly supported or operated local and regional bus service to and from the Subject Property, the Applicant will provide annual funding for operation or capital facilities, to an entity designated by the County for the ongoing/existing bus service to connect the on-site bus facilities referenced herein to bus service operating in the Route 7 corridor, for a period of 10 years from the time of final approval of ZMAP 2002-0005. Applicant's contributions in connection with all proffered bus subsidies shall be \$20,000.00 dollars in each calendar year as escalated in accordance with the CPI.

F. REGIONAL BUS SERVICE SUBSIDY

The Applicant shall provide annual funding for operation or capital facilities for bus service to and from the Subject Property for regional bus services for a period of 10 years. Such regional bus services shall be coordinated and/or operated by an entity to be designated by the County. The Applicant's contributions in connection with this regional bus service subsidy shall be \$30,000.00 dollars in each calendar year. The combined total amount of the local bus service subsidy and this regional bus service subsidy shall be \$50,000.00 per year and shall be provided to the Board of Supervisors for a period of 10 years from the time of final approval of ZMAP 2002-0005 or sooner, at the discretion of the Applicant, in order to facilitate the initiation of Phase 2 development. These bus subsidies shall be escalated based on the CPI.

G. BIKE FACILITIES

1. Bike Trail: The Applicant shall construct, prior to the issuance of a zoning permit for the 750th residential dwelling unit or the 650,000th square foot of non-residential development, whichever event occurs sooner, on the Subject Property, a separate eight-foot wide bike trail, in substantial conformance with Sheet 5 of the CDP, to connect along the eastern edge of the Subject Property from Shellhorn Road to the "Approximate Area of Dedication for Transit Purposes, Bus Station, and Kiss and Ride" as stated on the CDP adjacent to the proposed rail platform as shown on Sheet 4 of the CDP. This trail shall be located within a public access easement dedicated to the County. Such trail will be built in general conformity to the design shown on Sheets 4 and 5 of the CDP for Loudoun Station Boulevard (east). This bike trail shall be maintained by the Loudoun Station Owners' Association ("LSOA").

2. Bike Racks and Storage Lockers: The Applicant shall provide 20 - 10 space bicycle racks throughout the Subject Property (final locations to be determined at FDP) and four - 15 unit bicycle storage/locker areas within the Subject Property prior to the issuance of the first Zoning Permit for development in Phase 3. One of these bicycle storage/locker areas shall be located at or adjacent to the bus station area (the specific location shall be determined at FDP).

H. STREET NAMES

The Applicant will insure that no street names are duplicates of other roadway names within the County to the satisfaction of the appropriate County agency. The Applicant will apply to the proper County agency to determine what street names are appropriate for the Subject Property.

I. TRAVEL DEMAND MANAGEMENT (TDM) PROGRAM

1. Prior to the issuance of a zoning permit for non-residential space in excess of 1,000,000 square feet on the Subject Property, the Applicant shall submit to the Office of Transportation Services ("OTS") for review and approval for implementation by the Applicant or future Commercial Owners Association, as identified in Proffer IX, of a Travel Demand Management ("TDM") Program consisting of voluntary management measures, the goal of which is to reduce the volume of peak hour vehicle trips by 15 percent.
2. The TDM Program shall include provisions for a combination of some or all of the following elements which shall be appropriate to the size, scale and location of the proposed uses and which are intended to produce a reduction in the traffic and related impacts of the uses:
 - a. Transit Incentive Program: Ride-sharing and transit incentive program, which may include activities to encourage and assist the formation of car, van and bus pools, such as cash payments or subsidies, preferential parking charges or parking space location, and other analogous incentive programs.
 - b. Bike and Pedestrian Incentives: Bicycle and pedestrian incentive measures, will include provisions for bicycle parking and storage (racks) facilities, and may include the provision for shower and locker facilities and similar incentive features in the non-residential/commercial office buildings.
 - c. Flex-Time: Variable work hours, or flex-time programs under which employees may stagger their work hours in order to affect a reduction in the amount of peak period traffic levels to and/or from the Subject Property which would otherwise not occur.
 - d. Miscellaneous TDM Measures: Measures to reduce the reliance on single-occupancy vehicles by employees and others who will travel to and from the Subject Property which may include parking fee structures tailored to encourage multiple occupancy vehicles, time and other access controls to encourage use of parking spaces in on-site parking facilities by multiple occupancy vehicles, and programs to support and encourage the utilization of alternative transportation modes.
3. Following County approval of the TDM Program, the Applicant shall implement the approved provisions of the TDM Program immediately thereafter.

J. OFF-SITE RIGHT-OF-WAY ACQUISITION

When right-of-way and/or easements necessary for construction of proffered improvements is located off-site and cannot be obtained either; i) voluntarily through donation or proffer to the County; or ii) through purchase at fair market value by the Applicant, the Applicant shall request the County acquire such right-of-way and/or easements by appropriate eminent domain proceedings, with all costs associated with the eminent domain proceedings to be borne by the Applicant, including but not limited to, land acquisition costs in accordance with procedures established by the Loudoun County Attorney's Office. The initiation of such eminent domain proceedings is solely within the discretion of the County. Should the County refuse or fail to adopt a resolution allowing its power of eminent domain to be used so as to allow for acquisition of this off-site right-of-way within two (2) years of receipt of a written request from the Applicant to do so, the Applicant shall be relieved of its obligations to construct off-site proffered improvements which require use of this off-site right-of-way and/or easement.

K. PARKING

With the submission of each FDP for the Subject Property, the Applicant will provide a "Parking Management Plan," or update to such plan, to the County for review and approval of the long-term commuter parking within the Loudoun Station property. Such plan will be made available as a courtesy to the Regency HOA concurrent with the submission to the County. The Applicant shall afford the Regency HOA the opportunity to provide comments concerning the Parking Management Plan prior to submission to the County.

L. CONSTRUCTION TRAFFIC

At such time as Devin Shafron Drive on the east side of the Loudoun Station development is completed with connection to Loudoun Station Boulevard, and is accepted into the VDOT system of secondary roads for open, public vehicular usage, the Applicant shall use Devin Shafron Drive, and not Shellhorn Road, exclusively for construction traffic entering and exiting the Subject Property.

III. LANDSCAPING PLANS

Loudoun Station will be landscaped to standards as identified in the "Loudoun Station Design Guidelines and Standards," attached herein as Exhibit B and dated October 24, 2003, for the Subject Property and in conformance with the PD-TRC Zoning District. Landscape plans will be submitted to the County for review and approval in conjunction with the submission of each FDP as required in Section 4-1103(C) of the Zoning Ordinance. To the greatest extent feasible, the Applicant shall seek to use native and indigenous species in its landscaping plans. At a minimum, the Applicant will provide street trees on all public and private roadways and landscape the public plazas based on these landscape standards.

The Applicant will provide for an enhanced Type 2 Landscape Buffer (inclusive of berming, portions of which may be irrigated, and evergreen plantings) on the existing open space area owned by the Regency Homeowners Association ("Regency HOA") between Route 643 and the single family detached residential lots within the Regency subdivision property (MCPI #088-26-9238 and #089-48-

5689) and after receipt of a letter of permission to install landscaping from the Regency HOA. Copies of this correspondence will be provided to the County. Landscaping and berming will be installed prior to the issuance of the 250th residential Zoning Permit in Phase 1 or within two years of the date of approval of this application by the County Board of Supervisors, whichever shall come first in time. This landscape buffer will be consistent with the design for the Landscape Plan as prepared by the firm of Lewis, Scully, Gionet, as shown on Sheet 12 of the CDP.

The Applicant will provide maintenance for the plantings installed in the landscape buffer on the existing open space area owned by the Regency HOA for a period of two (2) years and shall warrant the life of the plantings associated with the enhanced Type 2 Landscape buffer for a period of two (2) years from installation.

IV. ENVIRONMENTAL FACILITIES

A. STREETSCAPE TREES

The Applicant has prepared the "Loudoun Station Design Guidelines and Standards" ("Design Guidelines") to regulate the design, planting, and maintenance of all landscape material on the Subject Property. The Applicant proffers to substantial conformity to the landscape guidelines as encompassed in the Design Guidelines and as attached herein as Exhibit B. These guidelines were developed in an effort to insure that the installed landscaping remain healthy through proper plant choice and perpetual maintenance. Requirements within these Design Guidelines ensure the replacement of all dead or dying trees and shrubs immediately, if any are discovered during regular inspections. This requirement shall also be part of the various association documents and covenants for the Subject Property. To the maximum extent feasible, the Applicant shall use native and indigenous species in its landscaped plantings.

B. WETLANDS MITIGATION

The Applicant shall obtain and provide the necessary wetland permits from the Army Corps of Engineers ("COE") and/or the Virginia Department of Environmental Quality ("DEQ"), or any other appropriate entity prior to disturbing any wetlands on the Subject Property and will provide copies of such permits to the County Staff. The Applicant shall provide mitigation for any wetlands disturbance pursuant to the terms of the permits obtained for the Subject Property. As a first and preferred option, the Applicant will attempt to purchase wetland mitigation credits from a COE and/or DEQ approved wetlands bank in Loudoun County, within the same watershed. As a second option, the Applicant shall seek to purchase such credits from a COE approved wetlands bank within Loudoun County within a different watershed. As a third option, if no such credits are available within Loudoun County, then the Applicant will seek to purchase wetland credits from a COE approved wetlands bank elsewhere in Virginia.

C. SOLID WASTE

The Applicant agrees to implement the guidelines contained within any approved "Solid Waste Management Plan" adopted by the Board of Supervisors. The Applicant will insure that the various property owner's association documents will include a provision for solid waste management and recycling and all applicable County regulations. As recommended in the Revised General Plan, the Applicant's development, installation, and operation of on-site solid waste facilities shall place a

priority on the reduction, reuse, and recycling of solid waste. During FDP review, the Applicant shall prepare and file for County review an Existing Site Conditions and Disposal Plan for solid waste generated by the Loudoun Station development and shall work with the Loudoun County Office of Solid Waste Management to investigate the feasibility of co-locating Loudoun County recycling centers on the Subject Property.

All property owners associations shall be responsible for their own trash removal services and shall conduct all solid waste management and recycling operations in conformance with the Codified Ordinances of Loudoun County and all applicable federal, state, and local solid waste regulations.

D. STORMWATER MANAGEMENT

Stormwater management ponds with Best Management Practices ("BMPs") integrated into the ponds have been designed, reviewed, and permitted, and are to be provided off-site and in accordance with the County Facilities Standards Manual. The two off-site ponds are located on 1) Greenway Corporate Park (MCPI #089-48-1925) and, 2) Claude Moore properties (MCPI #089-25-8906) and have been sized to handle Loudoun Station's stormwater management and BMP's.

E. GROUNDWATER MONITORING PROGRAM

Prior to the issuance of the 400th Zoning Permit for residential dwelling units for the Subject Property, the Applicant will provide the County with a \$5,000.00 contribution to the County for use in its "Groundwater and Well Management Program", payable to the County of Loudoun, and escalated in accordance with the CPI.

F. REFORESTATION

Prior to zoning permit issuance for the 969th residential dwelling unit or the 942,189th square foot of non-residential development, whichever event occurs sooner, the Applicant shall complete a reforestation of the area of the Subject Property depicted as "Reforestation Area" on Sheet 2 of 12 of the CDP using native tree species.

G. PILOT PROGRAM OF "GREEN ROOF" ARCHITECTURE

In an effort to provide an example of "Green Roof" architecture, the Applicant shall construct and install a vegetated botanical environment atop one of its buildings, complete with trees, bushes, and grass areas, prior to zoning permit issuance for the 1,000,000th square foot of non-residential development. This "Green Roof" area shall possess a minimum square footage area of 7,500 square feet and shall be depicted in landscaping plans filed with the FDP for the building that will be benefitted by this "Green Roof" program.

V. EMERGENCY SERVICES

A. ONE-TIME CONTRIBUTIONS

1. At the time of issuance of the Zoning Permit for development of each square foot of floor area on the Subject Property, the Applicant shall make a one-time capital facilities contribution of

\$0.10 per gross square foot of non-residential/commercial floor area covered by such non-residential/commercial Zoning Permit. Further, the Applicant will make a contribution, at the time of issuance of the zoning permit, for each residential dwelling unit of \$60.00 per dwelling unit. Such payments shall be payable to the County of Loudoun, for distribution by the County to the primary volunteer fire and rescue companies providing service to the Subject Property. Such contributions shall escalate in accordance with changes to the CPI; with 1988 as the base year. Capital Facilities contributions pursuant to this paragraph shall be divided equally between the primary servicing fire and rescue companies providing fire and rescue services to the Subject Property and shall not pertain to governmentally controlled property.

Notwithstanding the foregoing, at such time as the primary fire and/or rescue service to the Subject Property is no longer provided by a volunteer company, the obligation to make the contributions listed within this paragraph shall cease. If one of the companies ceases to be voluntary, the contribution will be 50 percent of the original contribution and it will be distributed to the remaining volunteer company. The intent of these provisions is to support a volunteer fire and rescue system, so long as it is the primary provider of fire and rescue services to the Subject Property.

2. The Applicant shall provide a one-time Capital Facilities contribution of \$25,000.00 to the County Fire Department toward the purchase of a ladder truck prior to the issuance of the first Zoning Permit for the construction of a building which is fifty six feet or greater in height. Such contribution shall be escalated in accord with changes to the Consumer Price Index.
3. The Applicant shall provide a contribution of \$30,000.00 for the funding of signal preemption devices when a study by the County Department of Fire and Rescue determines such a need exists, but in no event later than the issuance of the 1,050th residential Zoning Permit. Such contribution shall be escalated in accord with changes to the Consumer Price Index.

B. FIRE PROTECTION MEASURES

The Applicant will provide the following fire protection measures to minimize the risk associated with the high-rise type of development.

1. Install sprinklers in accordance with the appropriate building code (BOCA or IBC) requirements in all appropriate structures on the Subject Property;
2. Install a fire detection system in accordance with appropriate building code (BOCA or IBC) requirements in all commercial structures on the Subject Property and install stand pipes in the commercial structures and residential structures in accordance with the appropriate adopted Loudoun County building code (BOCA or IBC); and
3. Follow the fire protection construction guidelines for the protection of high-rise structures as determined by the appropriate building code requirements.

C. EMERGENCY SERVICES COMMUNICATIONS

The Applicant shall provide roof top space for three emergency services antennas, at no cost to the County, on one or more buildings of 100 feet or greater in height upon the completion of each such

building. The locations of the antennas shall be mutually acceptable to County Staff and the Applicant, and shall not interfere with, or prevent, Applicant from utilizing the same roof tops for other communications devices and shall be in conformance with the Design Guidelines, attached hereto as Exhibit "B". These antennas shall be for County emergency services use only and shall not be used for any other purpose by the County.

D. EMERGENCY ACCESS

The Applicant shall provide temporary all-weather compacted surface, satisfactory to the Fire Marshall, to allow access for emergency vehicles to all portions of the Subject Property that are under construction, unless there are paved roadways available to adequately and safely handle emergency vehicles. Such emergency access drives will be located in the courtyards of buildings and shall be constructed of a traffic-bearing pervious material in order to reduce storm water runoff to the extent possible.

VI. OPEN SPACE, CAPITAL FACILITIES, AND MISCELLANEOUS

A. OPEN SPACE PRESERVATION PROGRAM

The Applicant will contribute the amount of \$55.00 per dwelling unit and \$0.12 per gross square foot of non-residential space, at the time of issuance of each Zoning Permit, to Loudoun County for the purchase of Open Space Easements ("OSE's"). Under no circumstances shall this contribution equal less than \$265,000.00. In the event that the actual mix of residential and non-residential uses yield a contribution of less than \$265,000.00, the difference shall be paid to the County prior to zoning permit issuance for the 1050th residential dwelling unit or the 1,000,000th square foot of non-residential development, whichever occurs first in time. This contribution will be escalated based on the CPI.

B. OFF-SITE REGENCY PEDESTRIAN/ BIKE TRAIL

Prior to the filing of the first FDP for Phase 2 development, the Applicant shall seek approval by the adjacent Regency HOA to construct an eight-foot wide bicycle trail within the permanent open space of the adjacent Regency subdivision. If such approval is granted, this trail shall be located within a public access easement dedicated to the County by the Regency HOA.. The Regency HOA will be given 60-day notice prior to the submission of this first FDP for Phase 2 development in which to respond. The County will be provided a copy of all correspondence related to this issue. The precise location of the eight-foot wide bicycle trail will be determined at time of approval of the first FDP for Phase 2 development and will generally run from the Shellhorn Road vicinity in a northerly direction towards Ryan or Waxpool Roads. If this trail is constructed, the LSOA shall maintain the trail. Such trail will be constructed if and only if approved in writing by the Regency HOA to the County, and any required work permission letters are provided to the Applicant by the Regency HOA. If the foregoing conditions are not agreed to prior to the submission of the first FDP for Phase 2 development, the Applicant shall provide a \$150,000.00 contribution to the County Trails Program, in lieu of construction, which shall be due and payable prior to the issuance of the first Zoning Permit for any building in Phase 2. The Regency HOA will be properly notified in advance of this payment in lieu of construction to the County. Such contribution shall be escalated in accord with changes to the Consumer Price Index.

C. CONSUMER PRICE INDEX

Whenever these Proffers refer to the escalation of a proffered improvement or contribution with the Consumer Price Index ("CPI"), unless otherwise expressly stated herein, such reference shall mean the contribution or value shall escalate annually from a base year of 2003, by an amount equal to the percentage increase in the Consumer Price Index-All Urban Consumers as published by the United States Department of Labor. If this index shall cease to be published, then another equivalent index, as mutually agreed by the Applicant and the County, shall be used for the Loudoun Station project.

D. SCHOOL CAPITAL IMPROVEMENT PROGRAM

At the time of issuance of each residential Zoning Permit, the Applicant will contribute to the County or its designee the amount of \$100.00 per dwelling unit toward a capital facility improvement fund for the Loudoun County School District capital improvement expenditures or other appropriate agency, payable at the time of issuance of each residential Zoning Permit. Such contribution shall be escalated in accord with changes to the CPI.

E. LIMITS OF THE INNER AND OUTER CORE SUBAREAS

The Inner and Outer Core subareas of the Subject Property shall be in substantial conformity with the Inner Core/Outer Core demarcation line as shown on Sheet 2 of 12 of the CDP.

F. HISTORIC RESOURCES AND CONTRIBUTION TO LOUDOUN COUNTY RURAL HERITAGE PROGRAMS

In appreciation of Loudoun County's rich agricultural heritage and the prior use of the Subject Property as a working dairy farm, the Applicant shall endow a capital project (or projects) at the Loudoun Farm Heritage Museum at Claude Moore Park as determined by the Board of Trustees of the Loudoun Farm Heritage Museum. In order to endow this capital project (or projects), prior to approval of the first preliminary subdivision plan or site plan, whichever event may come first, the Applicant shall make initial cash contribution to the Loudoun Farm Heritage Museum in the amount of \$5,000.00. Additionally, prior to the issuance of the 150th residential Zoning Permit for the Subject Property, the Applicant shall make a second cash contribution to the Loudoun Farm Heritage Museum in the amount of \$45,000.000 in order to endow this capital project (or projects).

Furthermore, in light of the fact that the Applicant shall demolish all existing structures prior to commencement of on-site construction activities, the Applicant shall prepare historical resources recordation study of these existing structures prior to the commencement of any such demolition activities. This recordation study shall include, but not be limited to, a compilation of 35mm black and white glossy archival standard photographs on acid-free paper showing these on-site structures; a plat showing the location of these structures on the Subject Property and appropriate locational measurements; and a history of the structures and the Subject Property conducted by an architectural historian. Upon completion, this historical resources recordation study shall be made available to Loudoun County, the Commonwealth of Virginia, the Loudoun Farm Heritage Museum, and their designees. Such contribution shall be escalated in accord with changes to the CPI.

VII. BUILDING AND SITE DESIGN GUIDELINES

A. ARCHITECTURAL STYLE

The Applicant shall establish the Loudoun Station Design Review Board (the "DRB") prior to the issuance of the first Zoning Permit. Loudoun Station shall be developed in accordance with the attached "Loudoun Station Design Guidelines and Standards", dated October 24, 2003, attached hereto as Exhibit B, as prepared by Davis-Carter-Scott, Ltd.. All development will be subject to architectural review and approval of the DRB pursuant to the "Declaration of Protective Covenants" established for Loudoun Station. The covenants shall be submitted to the County staff concurrently with the Design Guidelines and will be part of the documents for the Loudoun Station Owners Association. The design, scale, proportion, and building setbacks shall be complimentary throughout the Subject Property. Once adopted, any major revision to the Design Guidelines and Standards shall not occur prior to review by the County and the Loudoun Station DRB.

B. DESIGN GUIDELINES

The Applicant and the Loudoun Station Owner's Association shall implement and enforce the "Loudoun Station Design Guidelines and Standards" (the "Design Guidelines") attached herein as Exhibit B. The Design Guidelines depict the architecture, landscape, plaza, and open space design requirements for the Subject Property and shall be made applicable to the Subject Property through covenants recorded prior to the first site plan approval. Architectural development of the Loudoun Station project shall be in general conformance with the Design Guidelines. General conformance with the Design Guidelines may be enforced by Loudoun County as a proffered element or by the Applicant and the Loudoun Station Owner's Association under operative covenants.

C. SIGNAGE AND LIGHTING

1. Comprehensive Sign Plan: At the time of submission of the first FDP for Phase 1, the Applicant shall submit for County review and approval a "Comprehensive Sign Plan" that will define the uniform standards for providing signage within the Subject Property. At a minimum, the signage plan shall include: (i) a proposed design for the main entry signs; (ii) a design for informational or directional signage for areas shown on each Site Plan, if any is proposed; (iii) design standards for individual commercial business signs and residential structures. The Applicant will conform to all submission requirements for a Comprehensive Sign Plan, as defined in the Zoning Ordinance.
2. Site Lighting: At the time of submission of each FDP for the development within the project, the Applicant shall submit to the County Staff for review and approval a lighting program that addresses site lighting for that FDP. Lighting fixtures used for parking areas shall be of a style and design that is similar to the architectural design of the entire project as depicted in the Loudoun Station Design Guidelines and Standards. Lighting shall be designed to eliminate glare on adjacent public roadways (including the Regency subdivision) through the use of fixtures that provide directional control of light away from the adjacent properties with down-lit fixtures and shall conform to the following criteria:
 - a. There shall be a maximum average illumination of five-foot candles for lighting on the exterior of the building including security lighting.
 - b. There shall be a maximum average illumination of 20-foot candles for any parking lots (on-grade or structured).

D. COUNTY STOREFRONT AND OUTDOOR CIVIC SPACE

1. Prior to the issuance of the first zoning permit for any non-residential development over 150,000 square feet, the Applicant shall provide 5,000 square feet of street level retail space for lease by the County. The Applicant will also provide an additional 5,000 square feet of street level space for lease by the County, prior to the issuance of the first Zoning Permit for any building in Phase 3. This retail/office space shall be provided as a "vacant shell" (as that term is generally used in retail commercial spaces) by the Applicant at no cost to the County for a period of five years, from the time of completion of such vacant shell by the Applicant. This space is intended for Loudoun County sponsored uses, civic and cultural activities. The space shall be covered by a standard lease agreement for Loudoun Station lessees which shall also provide for the continued use for up to an additional five years (after the initial five years expires) of the space at a 25 percent discount of market price for similar retail space within Loudoun Station should the County choose to continue use on a year to year basis. The County agrees to cause the users of the space to comply with standard lease requirements for Loudoun Station and abide by the adopted Loudoun Station Design Guidelines and Standards and the appropriate property owners association documents in effect.
2. Prior to the issuance of the first Zoning Permit for any building within Phase 3, the Applicant shall construct a 20,000 square foot civic space shown as the "Plaza" on the Concept Development Plan on Sheet 2. There shall be a focal point constructed within this Plaza. The Plaza will be owned by the LSOA and is intended for uses and activities such as farmers markets, civic and cultural activities. The LSOA shall have the right to review and approve the proposed uses within this space, depending on compatibility with the surrounding retail, residential, and office uses. The space shall comply with and abide by the adopted Loudoun Station Design Guidelines and Standards and the appropriate property owners association documents in effect.

E. HOTEL CONFERENCE FACILITIES

When a hotel is built on the Subject Property, the Applicant shall insure that the hotel operator will design and provide a minimum of 10,000 square feet of market rate conference space to help promote regional business, commerce, and tourism in the County.

F. BUILDING HEIGHT LIMITATION

No building shall be constructed within one hundred feet of the existing Shellhorn Road that is taller than four stories or fifty-six feet in height, including parapet walls or roof peaks. No building shall be constructed within 400 feet of the existing Shellhorn Road that is taller than six stories or 84 feet in height, including parapet walls or roof peaks.

G. REGENCY ENTRY FEATURE

The Applicant shall provide an entry feature to be constructed as part of the Regency HOA landscape buffer located on Regency HOA property between Shellhorn Road and the existing lots within the Regency property as defined under Proffer III included herein, after receipt of a letter of permission to install landscaping and the entry feature from the Regency HOA. The entry feature will be installed prior to the issuance of the 250th residential Zoning Permit in Loudoun Station or within two years of the approval of this application by the Board of Supervisors, whichever event

shall occur sooner in time. This entry feature will be consistent with the design included in the Landscape Plan shown on Sheet 12 of the CDP. This entry feature will be of a mutually agreeable size and material to both the Applicant and the Regency HOA and will conform to the Zoning Ordinance.

H. PRIVATE FITNESS FACILITIES

At a minimum, the Applicant shall construct one indoor fitness facility of approximately 2,000 square feet, to be privately owned by the LSOA, prior to the issuance of the 750th residential Certificate of Occupancy.

I. SWIMMING POOLS

The Applicant shall construct two private outdoor pools on the Subject Property: a) first pool to be available prior to the issuance of the 750th residential dwelling unit Zoning Permit; and b) the second pool to be available prior to the issuance of the 1,500th residential Zoning Permit. The size of each pool will be a minimum of 1,500 square feet. These swimming pools shall be owned by the LSOA.

J. RECREATION FIELDS

The Applicant shall contribute \$350,000.00 for capital facilities improvements of parks and recreation facilities in the vicinity of the Subject Property, which shall be due and payable to the County in the amount of \$100,000.00 prior to issuance of the 250th residential Zoning Permit; and an additional amount of \$250,000.00 prior to issuance of the 850th residential Zoning Permit or the issuance of the Zoning Permit for non-residential space in excess of 500,000 square feet, whichever is first in time. These contributions will be escalated according to the CPI.

K. MENTAL HEALTH/MENTAL RETARDATION PROGRAM

Prior to the issuance of the 700th residential zoning permit the Applicant shall convey to the County three ADA-compliant condominium dwelling units, with each unit having a minimum of two bedrooms for the MH/MR program within the Subject Property at locations to be mutually agreed upon by the County and the Applicant. In addition to the foregoing, the Applicant shall contribute a total cash contribution of Twenty Thousand Dollars (\$20,000) for home furnishings to the County concurrent with the first deed of conveyance.

VIII. AFFORDABLE HOUSING

While the Subject Property is exempt from the Affordable Dwelling Unit (“ADU”) Zoning Ordinance requirements, the Applicant will provide a contribution of two percent of its total dwelling unit count as ADUs within the Subject Property. The actual number of ADUs will be determined at the FDP stage whereby each FDP submission will designate two percent of the dwelling units as ADUs. The ADUs in Loudoun Station shall be a mix of multifamily rental units and/or for-sale condominium units.

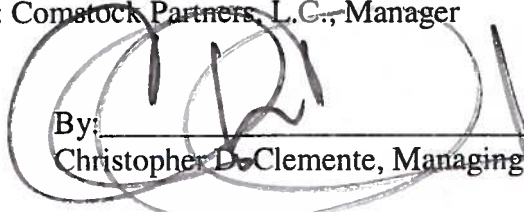
IX. LOUDOUN STATION OWNERS ASSOCIATION, HOMEOWNERS ASSOCIATION AND COMMERCIAL OWNERS ASSOCIATION

- A. A Loudoun Station Owners Association ("LSOA") will be established and documents creating the LSOA will be submitted to the County for review and approval prior to the approval of the first record plat or site plan, whichever is first in time. All private owners of land or buildings in Loudoun Station will be part of the LSOA. The LSOA shall have the power and obligation to enforce the Loudoun Station Design Guidelines.
- B. A Homeowners Association ("HOA") will be established as a sub-association to the LSOA, prior to approval of the first record plat or first site plan, whichever is first in time. All owners of non-rental residential land or buildings in Loudoun Station intended to be developed, conveyed, and/or occupied as for sale housing, including, but not limited to residential condominium units, shall be members of such HOA.
- C. A Commercial Owners Association ("COA") will be established as a sub-association to the LSOA, prior to the first record plat or first site plan approval, whichever is first in time. The owners of all non-residential property and all residential rental income producing property, buildings, and land in Loudoun Station intended to be developed and occupied as such, including, but not limited to office, office condominium, retail, commercial and apartments, other than the County or VDOT, shall be members of such COA.
- D. The LSOA, HOA, and the COA shall be responsible for trash removal and maintenance of all association owned common areas including continued maintenance and replacement of all landscaping (including dead or dying trees), maintenance of all recreational areas, equipment, pedestrian and bicycle trails, tot lots, sports trails, sidewalks, and stormwater management facilities, and maintenance of private streets, including snow removal.
- E. At the Applicant's option, additional sub-associations may be established to control and maintain certain parking structures, to further the purpose of the HOA and COA, or as reasonably needed in connection with the ongoing development and ownership of land or buildings within Loudoun Station.

The undersigned hereby warrants that all owners of a legal interest in the Subject Property have signed this Proffer Statement and that they have the full authority to bind the Subject Property to these conditions, and that these proffers are entered into voluntarily.

COMSTOCK LOUDOUN STATION, L.C.

By: Comstock Partners, L.C., Manager

By: 
Christopher D. Clemente, Managing Member

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this 4th day of November, 2003, by
Christopher D. Clemente, as Managing Member of Comstock Partners, L.C., being the Manager of Comstock
Loudoun Station, L.C.


Notary Public

My Commission Expires: 11-30-04

Kin-Sing Au
Kin-Sing Au

Florence H. Au
Florence H. Au

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this 4th day of November, 2003, by Kin-Sing Au.

Kelly J. Wylie
Notary Public

My Commission Expires: 11-30-04



COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this 5th day of November, 2003, by Florence H. Au.

Kelly J. Wylie
Notary Public

My Commission Expires: 11-30-04



EXHIBIT A

ZONING ORDINANCE MODIFICATIONS

~LOUDOUN STATION ~

ZMAP 2002-0005

PLANNED DEVELOPMENT – TRANSIT RELATED CENTER (PD-TRC)

Based on Section 6-1504 of Revised 1993 Zoning Ordinance

The following is a list of Zoning Ordinance modifications that are necessary to implement the Planned Development – Transit Related Center (“PD-TRC”) proposed for the Loudoun Station property (“Project”). The ordinance modifications will allow the Project to fulfill the Revised General Plan goal for mixed use, transit-oriented development and thus exceed the public purpose of the existing Zoning Ordinance regulations.

Modification # 1. Section 4-1121 (C) & (D), Private Streets:

4-1121 Development Setback and Access from Major Roads. The following requirements shall be observed:

- (C) Private Streets. Roads, serving single family attached, townhouse, and multifamily uses only, may be constructed to private street standards set forth in the Facilities Standards Manual, provided the following conditions are met:*
 - (1) All residences served by the private road shall be subject to a recorded covenant expressly requiring private maintenance of such road in perpetuity and the establishment, commencing with the initial record plat, of a reserve fund for repairs to such road.*
 - (2) The record plat and protective covenants for such development shall expressly state that the County and VDOT have no and will have no responsibility for the maintenance, repair, or replacement of private roads.*
 - (3) Sales brochures or other literature and documents, provided by the seller of lots served by such private roads, shall include information regarding responsibility for maintenance, repair, replacement, and covenants pertaining to such lots, including a statement that the County has no and will have no responsibility for the maintenance, repair, or replacement of private roads.*
- (D) Roads serving all other uses shall be designed and constructed to VDOT standards for inclusion in the state highway system.*

Proposed Modification Request: The Applicant requests that this section of the Revised 1993 Zoning Ordinance, which allows private residential streets, be extended to non-residential uses as well within the Project.

Justification: This section of the Zoning Ordinance contemplates private streets serving multi-family, single family attached, and single family detached uses but does not specify that private roads can serve retail, office, and other non-residential uses. As is required by the Zoning Ordinance, the project proposed by the Applicant will have residential and non-residential uses and

the Applicant wishes to construct and maintain a portion of the interior roads serving the community as private roads. With a vertical and horizontal mix of land uses, as proposed in this application, it would be virtually impossible to ensure that any private road within the community would serve only residential uses. The mixed-use, transit-related design requires an integration of both residential and nonresidential uses throughout the project. The provision of private streets within the entirety of the 43-acre Project will allow for unified design and roadways that connect to all portions of the project.

By providing private streets, in conformance with the other provisions of this section of the Ordinance, the public will be benefited with by the provision of more usable and aesthetically pleasing streetscapes which include roundabouts, street trees, planters, on-street parking, and brick sidewalks. Also, this modification will also allow the Applicant to close certain streets to traffic from time to time, as other Town Center communities do, to provide cultural events that will promote the public purpose of the Zoning Ordinance to allow these public events to occur.

Modification #2. PD-TRC District, Section 5-1406(E)(2), Determination of Buffer Yard, Special Situations

(E) Special Situations.

- (2) If any property adjoins any existing or planned arterial road, except in the A-3, A-10, AR-1 or AR-2 district, the required buffer yard shall be in accordance with Buffer Yard Type 3, however, such buffer yard landscaping shall be supplemented by a landscaped earthen berm at least four (4) feet in height and not to exceed a slope of 2:1. This requirement may be waived modified, and/or reduced, or the location of the required berm may be adjusted as approved by the Zoning Administrator during site plan review, where necessary to preserve existing mature trees. No buffer yard shall be required for the A-3 and A-10 districts where such property adjoins any existing or planned arterial road.*

Proposed Modification Request: The Applicant requests that a modification be approved to eliminate a Type 3 Buffer Yard requirement between the proposed property for the Kiss & Ride Facility, the bus station area and the Dulles Greenway, which is an arterial roadway under the CTP. Prior to site plan approval for these uses, the Applicant shall submit a landscaping plan for review and approval by the County.

Justification: By allowing the Route 772 transit station (including bus station, kiss & ride facility, and access to the rail platform) to be constructed without a Buffer Yard Type 3, the design proposed by the Washington Metropolitan Area Transit Authority (WMATA) in the Environmental Impact Study (EIS) can be accommodated. Additionally, a buffer is not justified between like-uses; and because the proposed WMATA rail system will operate within the median of the Dulles Greenway, like the transit station, it should be considered as a transit use thereby nullifying the need for a buffer from another like transit use. The provision of the required Type 3 buffer actually works against the best possible pedestrian-friendly transit facility planning possible. The public purpose of the Zoning Ordinance will be exceeded by eliminating an unnecessary buffer yard between like uses.

Modification # 3. Section 4-1102(A) & (C), Location, Size, and Components:

- (A) *Location.* Land zoned PD-TRC shall be divided into three parts or subareas as described in Section 4-1102(C) below. Neither the Inner Core subarea nor the Outer Core subarea shall extend further north than Shellhorn Road (Route 643).
- (C) *District Subareas.* The Transit Related District shall be divided into three (3) parts or subareas. The boundaries of the subareas will vary to correspond with physical and natural barriers that limit compact development, pedestrian and bicycle connections and movement, and access to the transit station. Limiting factors will include topography and major arterials so that the subareas may not be a full radius, but will be influenced in form by natural and man-made barriers:
- 1) *Inner Core* - shall mean the total gross land area located generally within a one-quarter (1/4) mile from the outer edge of the planned rail transit station platform, as shown on the approved Concept Development Plan. The highest land-use intensities will be located close to the planned transit stop. The primary focal point of the development will be located in this subarea. Retail, office, service commercial, and high density residential uses are located in this subarea, with a vertical mix of uses, public gathering places, and a predominance of pedestrian oriented uses (uses located at street level that are visible and accessible from the street);
 - 2) *Outer Core* - shall mean the total gross land area located outside the Inner Core subarea, but generally within one-half (1/2) mile from the outer edge of the planned rail station platform, as shown on the approved Concept Development Plan. Densities are high, yet decrease in intensity as they increase in distance from the transit stop. Major retail, office, service commercial, and high density residential uses are located in this subarea, with a vertical mix of uses and a predominance of pedestrian-oriented uses (uses located at street level that are visible and accessible from the street); and
 - 3) *Transit-Designed Supportive Area* - shall mean the total gross land area located outside the Outer Core subarea, but generally within one mile from the outer edge of the planned rail station platform, as shown on the approved Concept Development Plan. This subarea is meant to provide a transitional and complementary area between the high-density core and the surrounding development pattern. The Transit-Designed Supportive Area should provide a mix of land uses that complement and support the uses of the Inner and Outer Core subareas. This subarea is adjacent to and an extension of development in the Inner and Outer Core subareas and includes design features that complement the Inner and Outer Core subareas such as flexible lot design and pedestrian and bicycle connections. Commercial uses within the TDSA should complement retail, office, and service commercial uses in the Inner and Outer Core subareas.

Proposed Modification Request: The Applicant requests that a modification to this section of the Ordinance be approved to allow two parts or subareas of the PD-TRC (Inner-Core & Outer-Core) be provided within the limits of this application in-lieu of the three parts or subareas specified in the Ordinance.

Justification: Whether mistakenly or intentionally, this section of the Zoning Ordinance as written requires that any application, no matter its size or proximity to a proposed transit node, include Inner Core, Outer Core, and Transit-Designed Supportive subareas. The entire project proposed in this application barely extends beyond ¼ mile from the proposed transit station, which is the limit of the Inner-Core as described by the RGP and the Ordinance.

The limits of the Inner Core area are described in the Revised General Plan (RGP) and the Zoning Ordinance as being the area roughly $\frac{1}{4}$ mile from the outer edge of the planned rail transit platform. The limits of the Outer Core are described in the RGP and the Zoning Ordinance as being the area roughly $\frac{1}{2}$ mile from the outer edge of the planned rail transit platform. The limits of the Transit-Designed Supportive Area are described in the RGP and the Zoning Ordinance as being the area roughly 1 mile from the outer edge of the planned rail transit platform. Since the limits of this application barely extend beyond those described for the Inner Core, it is reasonable to expect that the Applicant not be required to include any Transit-Designed Supportive Areas in the project. Also, it should be noted that paragraph (A) of this section of the Ordinance specifies that the Inner and Outer Cores shall not extend further north than Shellhorn Road, which is the northern limit of this application. As such, this modification conforms to the purpose and intent of the Zoning Ordinance to a greater degree than would be required under the existing provisions of the Zoning Ordinance.

Modification #4. Section 4-1109(A) and (C), Mix of Uses:

- (A) *Inner and Outer Core Sub areas. The land use mix to be achieved within the combined Inner and Outer Core subareas shall meet the minimum as found in the table below. Such mix, and the phasing thereof, shall be identified on the Concept Development Plan. Gross land area devoted to principal land uses shall be balanced in the following ratios:*

<u>Land-Use Category</u>	<u>Minimum</u>
<u>E. RESIDENTIAL 20%</u>	
Office	20%
Commercial Retail and Services	10%
<u>F. PARKS, CIVIC & OPEN SPACE 20%</u>	

- (C) *In order to exceed the minimum percentage in any one category, the minimum percentage in all categories must be achieved as evidenced by an approved Final Development Plan. After the minimum percentages have been achieved, in addition to the requirements of Section 6-1000, a zoning permit for change in tenant occupancy shall include a tabulation indicating that the minimum percentages continue to be met.*

Proposed Modification Request: The Applicant requests to modify the requirement that the minimum percentage of all uses be met prior to exceeding the minimum of one of the uses in any phase of the application. The Applicant will meet or exceed all minimum percentages by the completion of Phase 3 of the project.

Justification: The Applicant's proposed development program for Loudoun Station meets the overall intent of Section 4-1109(A) "Mix of Uses" by meeting the minimum overall land use percentages of the Zoning Ordinance by the completion of the project. The Zoning Administrator has indicated that the criteria in the Zoning Ordinance and the intent of the RGP is met if the land area utilized for residential uses ranges from 20-70% and the land area utilized for non-residential uses ranges from 30-80%. The Zoning Administrator has interpreted that the requirement for Parks, Civic, & Open Space shall be calculated on a land area basis after the overall property/application has been apportioned between residential and non-residential uses. The Parks, Civic, & Open Space land area shall be distributed throughout the site in the residential and non-residential areas and shall equal at least 20% of the land area for the application. The Applicant believes that the intent of the Zoning Ordinance is being exceeded with the proposed design for this transit-oriented project. The specified percentages of use have been achieved on the Concept Development Plan submitted with this application and approval of this modification should avoid the need for revisions to the application in the future due to market conditions or changes the staging of the Project during future Final Development Plan submissions.

The urban design for Loudoun Station, as proposed on the Concept Development Plan, has purposely

specified that the low-rise multifamily buildings within the project shall be adjacent to the Regency subdivision. These four-story buildings create a transition from the Regency single-family detached homes to the higher density buildings in the Inner Core of the project. The Applicant plans to construct this transitional buffer area in the early stages of the project in order to provide this transition. By constructing the lower density residential buildings along Shellhorn Road first and continuing with the construction of the site from there towards the Greenway, the logical increase in density envisioned by the RGP and Ordinance can be achieved without demolition and reconstruction of buildings constructed in the early stages of the project. Also by proceeding in this fashion, the Applicant will be able to create an inviting entrance to the project from its main access point (Shellhorn Road), allow the initial buildings along Shellhorn road to provide sound attenuation for the Regency HOA to the north, as well as provide a visual barrier to the ongoing construction operations for the public from Shellhorn Road. In doing this, a higher percentage of residential use will exist in the first two Phases of the project before the land-use mix criteria are ultimately met by the completion of the third Phase of the project. This Zoning Ordinance modification is justified in order to encourage and promote taller, higher density development in proximity to the Route 772 rail platform where the pedestrian activity should be located. Higher density office development should be located in taller buildings in a project of this nature and the retail core should be planned to focus around the transit station adjacent to the Greenway, as is the case with this application. Higher concentrations of non-residential uses should not be located in the portions of development that are furthest away from the transit platform nor nearest an adjacent residential community. The majority of the employment uses are planned in proximity to the rail platform and away from the lower density residential development that is adjacent to the Regency subdivision along Shellhorn Road. This planning concept thereby makes it possible to provide the mix of land uses envisioned by the RGP and in will help ensure a more vibrant, user-friendly development.

Higher intensity non-residential uses meeting the land use mix criteria described in section 4-1109(A) are also simply not a marketable commodity in the short term for the Project given the lack of transit service and the high vacancy rates for non-residential space at this time within the County. Bus and rail service for commuters is the draw for the office and retail components of the Project that will make it the vibrant, successful node that is envisioned by the Revised General Plan, the Zoning Ordinance, and the Toll Road Plan.

In summary, the public purpose of the Zoning Ordinance is exceeded by the implementation of this modification of the Zoning Ordinance.

Modification #5. PD-TRC District, Section 4-1113(B), Pedestrian-Oriented Building

Placement and Uses:

- (B) *Within the Inner Core subarea, at least 70% of the first floor building frontage, and within the Outer Core subarea at least 30% of the first floor building frontage, as required in subsection 4-1113 (A)(1) above, shall contain pedestrian-oriented development, preferably commercial retail and service uses, on the first floor. In multi-family buildings, these percentages may be accomplished with residential accessory uses, lobbies, mailboxes, meeting rooms, and indoor recreational uses. This section shall not apply to single-family dwellings.*

Proposed Modification Request: Within the Inner Core portion of the Subject Property, a minimum of thirty percent (30%) of the first floor building frontage of Loudoun Station Boulevard - West shall contain pedestrian-oriented development.

Justification: By allowing the modification, the Applicant can fulfill the operative intent of the PD-TRC zoning district regulations and the requirements of the County-wide Transportation Plan (CTP). Since the portion of Loudoun Station Boulevard that is located within the Inner Core is immediately adjacent to the Transit collector road as specified by the CTP, pedestrian activity will be restricted greatly. The County Office of Transportation plans to direct pedestrian access to a limited route along this portion of the transit collector road thereby limiting the ability of the applicant to fully realize the 70% use criteria of this section of the ordinance. By reducing the required percentage, this portion of road frontage can be more fully utilized and will enable the full use and vibrancy envisioned by the Revised General Plan.

This modification will also enhance the ultimate use of the T.O.D. by helping protect the overall public safety. This zoning modification will ensure that an inordinate number of pedestrian trips are not forced along the frontage of a 6-lane road section which is adjacent to a visual barrier that will be created by the abutment of the transit collector bridge. This modification will also provide a lower density transition from the adjacent uses on the west of the subject property.

The usability of the building frontage that would be provided by requiring up to 70% pedestrian oriented uses on the ground level of buildings along this busy section of roadway is seriously questioned by the Applicant. This modification has been discussed with staff and the Applicant's architect, and the Applicant suggests that attempting to fulfill the 70% requirement imposed by the Zoning Ordinance would yield a large amount of under-utilized "dead-space" and cavernous first floor lobby facilities. As such, the Applicant believes that requiring this higher percentage in this area of the development would be a detriment to the compact transit oriented design planned for Loudoun Station, and would thereby limit the vibrancy and user friendly goals of a TOD. Therefore, reducing this criteria to 30% in this area of lower pedestrian usage will exceed the public purpose of the Zoning Ordinance.



EXHIBIT B

Loudoun Station Design Guidelines and Standards”, dated October 24, 2003, and prepared by Davis-Carter-Scott, Ltd.

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